

1 RICHARD D. McCUNE, State Bar No. 132124
rdm@mccunewright.com

2 DAVID C. WRIGHT, State Bar No. 177468
dcw@mccunewright.com

3 McCUNE·WRIGHT·AREVALO, LLP

3281 East Guasti Road, Suite 100

4 Ontario, California 91761

Telephone: (909) 557-1250

5 Facsimile: (909) 557-1275

6 Stephen G. Larson, State Bar No. 145225

SLarson@larsonobrienlaw.com

7 LARSON O'BRIEN LLP

555 South Flower Street, Suite 4400

8 Los Angeles, CA 90071

Telephone: (213) 436-4888

9 Facsimile: (213) 623-2000

10 *Attorneys for Plaintiffs and the Proposed Class*

11 **[LIST OF ADDITIONAL COUNSEL ON SIGNATURE PAGE]**

12
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15
16 THOMAS DAVIDSON, TODD CLEARY,)
ADAM BENELHACHEMI, MICHAEL)
17 PAJARO, JOHN BORZYMOWSKI,)
BROOKE CORBETT, TAYLOR BROWN,)
18 JUSTIN BAUER, HEIRLOOM ESTATE)
SERVICES, INC., KATHLEEN BAKER,)
19 MATT MUILENBERG, and WILLIAM BON,)
on behalf of themselves and all others similarly)
20 situated,)

21 Plaintiffs,)

22 v.)

23 Apple, Inc.,)

24 Defendant.)

Case No.: 5:16-cv-4942-LHK

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT OF
THEIR UNOPPOSED MOTION FOR THE
APPOINTMENT OF INTERIM CLASS
COUNSEL**

1 Pursuant to the Court's order, Plaintiffs submit this Supplemental Memorandum of Law
2 in Support of Their Unopposed Motion for Appointment of Interim Class Counsel to clarify the
3 role of proposed Interim Class Counsel and Interim Liaison Counsel. (See ECF No. 41.) As
4 detailed in the order previously submitted motion and supporting declarations (ECF No. 25),
5 Plaintiffs have proposed the law firm of McCune Wright Arevalo, LLP, to serve as Interim Class
6 Counsel and the law firm of Larson O'Brien, LLP, to serve as Interim Liaison Counsel. No other
7 firms are seeking leadership positions. Defendant Apple, Inc., takes no position with regard to
8 Plaintiffs' Supplemental Memorandum of Law in Support of Their Unopposed Motion for the
9 Appointment of Interim Class Counsel.

10 The prior proposed order submitted to the Court would grant McCune Wright Arevalo
11 authority over the following matters, among other things, on behalf of Plaintiffs and the putative
12 class:

- 13 • to delegate and oversee the assignment of specific tasks to other counsel to ensure
14 the litigation is conducted efficiently and effectively, (ECF No. 25-5, ¶ 2.d);
- 15 • to monitor the activities of any other law firms involved in the litigation and to
16 ensure that unnecessary expenditures of time and funds are avoided, (ECF No. 25-
17 5, ¶ 2.g);
- 18 • to maintain adequate time and disbursement records covering services, (ECF No.
19 25-5, ¶ 2.f);
- 20 • to determine and present the position of Plaintiffs and the putative class on all
21 matters, (ECF No. 25-5, ¶ 2.a);
- 22 • to coordinate and conduct discovery, (ECF No. 25-5, ¶ 2.b);
- 23 • to perform other duties necessary to the proper prosecution of this litigation on
24 behalf of Plaintiffs and the putative class, (ECF No. 25-5, ¶ 2.h);

25 In light of the Court's request at the Case Management Conference, Plaintiffs submit
26 herewith an updated proposed order that further clarifies McCune Wright Arevalo's and Larson
27 O'Brien's roles and responsibilities as Interim Lead Counsel and Interim Liaison Counsel,
28 respectively.

1 Following the filing of the original complaint, McCune Wright Arevalo was contacted
2 separately by Larson O'Brien, Simmons Hanly Conroy, and Greg Coleman Law. Each firm had
3 been investigating the alleged Touch Screen Defect and had been contacted by consumers
4 affected by the Touchscreen Defect. McCune Wright Arevalo has had a good working
5 relationship with each of these firms on prior cases and the firms agreed that rather than filing
6 separate actions on behalf of their clients, their clients would be added as representatives for the
7 Class and various Sub-Classes alleged in the First Amended Complaint.

8 It was further determined and agreed upon that the class would best be served by the
9 appointment of a single firm as lead counsel, that would be ultimately responsible for strategic
10 litigation decisions and the delegation of work on behalf of the class, and the appointment of
11 liaison counsel whose role would be to act as the primary contact to interact both with the Court
12 and with the other interested law firms.

13 Following the filing of the original complaint in this action, attorneys from Christensen
14 Young & Associates filed a similar action in the United States District Court for the District of
15 Utah on behalf of certain Utah plaintiffs. After discussions between defense counsel and
16 attorneys for McCune Wright Arevalo and Christensen Young & Associates, it was agreed that
17 Christensen Young & Associates would add its Utah class representative to this action and
18 dismiss the Utah action rather than pursue competing actions.

19 It is precisely because of these early efforts at organization and consolidation of these
20 various interests that Plaintiffs are seeking a formal interim appointment of lead and liaison
21 counsel. Plaintiffs believe that the proposed leadership structure of a single lead counsel and a
22 single liaison counsel that will be responsible for every aspect of the conduct of this litigation,
23 including the delegation of work to those firms whose clients are serving as named class
24 representatives in this action, as is necessary and in the best interests of the class.

25 To be clear, in order to ensure that interests of the class are served effectively and
26 efficiently, Plaintiffs submit a revised order that puts in place the following protocols should the
27 Court grant the Motion for Appointment of Interim Lead and Liaison Counsel:

- 28 • McCune Wright Arevalo and Larson O'Brien will delegate specific tasks in this

1 litigation only as required by the scope of this litigation in the best interests of the
2 Class and in a manner that ensures there is no duplication of work performed on
3 behalf of the class;

- 4 • Simmons Hanly Conroy, Greg Coleman Law, and Christensen Young & Associates
5 will perform work on the case only when work is delegated directly to them by
6 McCune Wright Arevalo or Larson O'Brien;
- 7 • McCune Wright Arevalo and Larson O'Brien will require that all firms enter their
8 time on a weekly basis and submit it to McCune Wright Arevalo and Larson O'Brien
9 for review and approval to ensure all timekeeping is accurate, reasonable, related to
10 the work delegated, and to ensure that there is no unnecessary or unintended
11 duplication of work; and
- 12 • McCune Wright Arevalo and Larson O'Brien will review the lodestars of the above
13 firms on a monthly basis to ensure the collective lodestar of all firms is reasonable in
14 relation to the cumulative work performed.

15
16 DATED: December 9, 2016.

17 **MCCUNE WRIGHT AREVALO, LLP**

18
19 By: /s/ Richard D. McCune
20 Richard D. McCune
21 State Bar No. 132124
22 rdm@mccunewright.com
23 David C. Wright
24 State Bar No. 177468
25 dcw@mccunewright.com
26 3281 East Guasti Road, Suite 100
27 Ontario, California 91761
28 Telephone: (909) 557-1250
Facsimile: (909) 557-1275

**McCUNE · WRIGHT ·
AREVALO, LLP**
Joseph G. Sauder
Matthew D. Schelkopf
Joseph B. Kenney
555 Lancaster Ave.
Berwyn, PA 19312
Telephone: (610) 200-0580

Proposed Interim Lead Counsel

Stephen G. Larson
Larson O'Brien LLP
555 South Flower Street,
Suite 4400
Los Angeles, CA 90071
Telephone: (213) 436-4888

Proposed Interim Liaison Counsel

Mitchell M. Breit*
mbreit@simmonsfirm.com
SIMMONS HANLY CONROY
112 Madison Avenue
New York, NY 10016
Telephone: (212) 784-6400
Facsimile: (212) 213-5949

Greg Coleman*
greg@gregcolemanlaw.com
GREG COLEMAN LAW
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Telephone: (865) 247-0080
Facsimile: (865) 522-0049

Steven A. Christensen*
Zane L. Christensen*
**CHRISTENSEN YOUNG &
ASSOCIATES, PLLC**
9980 So. 300 West, #200
Sandy, UT 84070
Telephone: (801) 676-6447
Facsimile: (888) 569-2786

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Richard D. McCune, hereby certify that on this 9th day of December, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

DATED: December 9, 2016

Respectfully submitted,

By: /s/ Richard D. McCune
Richard D. McCune